

RETURN DATE: JANUARY 7, 2020 : SUPERIOR COURT

STAMFORD BOARD OF EDUCATION and : J.D. OF STAMFORD-NORWALK
CITY OF STAMFORD :

V. : AT STAMFORD

ABM INDUSTRY GROUPS, LLC, and :
A.F.B. CONSTRUCTION MANAGEMENT OF :
TRUMBULL, INC. : DECEMBER 2, 2019

COMPLAINT

**COUNT ONE: ON BEHALF OF STAMFORD BOARD OF EDUCATION AND
CITY OF STAMFORD AS TO ABM INDUSTRY GROUPS, LLC
FOR BREACH OF CONTRACT**

1. The Plaintiffs are the Stamford Board of Education (“SBOE”), also known as Stamford Public Schools (“the SPS”), and the City of Stamford (“the City”).

2. At all relevant times, Defendant ABM Industry Groups, LLC (“ABM”), was a foreign (Delaware) corporation registered and authorized to conduct business in Connecticut, and which had a place of business in Fairfield County, Connecticut. On information and belief, ABM is a national facilities management firm with approximately 140,000 employees and \$6.4 billion in reported annual revenue in 2018.

3. SBOE operates and maintains 21 public schools and their attendant grounds, as well as the SPS adult education program at Holy Name Church, and the Alternate Route to Success program at Lockwood Avenue.

4. At all relevant times, the aforementioned facilities and attendant grounds, except for the Holy Name Church, were and are owned by the City.

5. In 2016, SBOE issued Request for Proposal 16-14 (“the RFP”) seeking an outside professional facilities management firm “to manage its building and grounds and operations and maintenance staff on a contract basis.” The RFP is attached hereto as **Exhibit A**.

6. Section 3.3.A of the RFP lists the “Basic Management Responsibilities” the successful respondent would be promising to perform, including, without limitation, the responsibility to:

- a. Visit, inspect and meet with the principal and head custodian at each facility twice a week and document the outcome of these activities;
- b. Develop on a quarterly basis a written facility management plan for each facility and present the plans to the SPS for its review and approval, incorporating the SPS’s input and making modifications as required;
- c. Assure the safe, efficient mechanical and environmental operation of all buildings and the safe use and attractive appearance of all buildings and grounds, and work to continually upgrade the district’s mechanical systems within existing budget constraints;
- d. Create, present, manage and balance an operating budget of approximately \$21 million per year as well as coordinate annual and long-term capital plans with the City’s Engineering and Building Departments;
- e. Solicit and supervise maintenance service contracts and establish schedules for service work. The subject contracts include but are not limited to those for emergency generators, fire alarms, security systems, elevators, control systems, heating, ventilating, and air conditioning (‘HVAC’) systems, Asbestos Hazard Emergency Response Act (‘AHERA’) plans, grease interceptors, pest management, and field maintenance;
- f. Maintain regulatory compliance for or with, among other things, above and below ground bulk petroleum storage tanks, Indoor Air Quality (‘IAQ’), air emissions, Americans with Disabilities Act (‘ADA’), Occupational Safety and Health Administration (‘OSHA’), hazardous materials (‘HAZMAT’), Municipal Separate Storm Sewer System (‘MS4’) storm water and Water Pollution Control Authority (‘WPCA’), fat, oils and grease (‘FOG’) requirements;
- g. Review, recommend, and implement improvements in maintenance schedules and trade worker schedules. Coordinate and supervise summer building cleaning with the head custodians to maximize efficiency and minimize cost;
- h. Manage/Supervise all custodial (night, day shift, and part-time) building operations staff and all trades workers (7 days per week/24 hours per day/365 days per year) as well as manage all weekly payroll requirements;

- i. Supervise the hiring, discipline and termination of custodial/trades personnel and OSS personnel;
- j. Supervise repairs to buildings, grounds, and equipment and recommend renovation and replacement of outdated equipment and material; maintain an effective work order control system;
- k. Work with building principals and the head custodians to prepare a capital needs priority list forecasted out for seven (7) years, and update the list before submitting capital requests to the SBOE on or before October of each year;
- l. Implement budget controls/staffing assignments and overtime supervision; and,
- m. Supervise the SPS's IAQ [Indoor Air Quality] management program.

7. Section 3.3.B of the RFP further identified "Advanced Management Responsibilities" the successful respondent would be promising to perform, including, without limitation, the responsibility to conduct a "Facilities Needs Study."

8. In addition, §4.1 of the RFP, entitled "Proposer Requirements," identified the skills and experience the successful respondent would be required to possess, including, without limitation those regarding:

- a. Roof Replacement and Repair;
- b. HVAC Replacement and Repair; and,
- c. Indoor Air Quality.

9. Section 4.1 of the RFP also identified several areas of expertise that were desired from the successful respondent including, without limitation "Playground Safety Certification."

10. On or about December 6, 2016, SPS issued Amendment 1 to the RFP, consisting of responses to questions respondents submitted, including those the Defendant ABM submitted. ("Amendment 1," attached hereto as **Exhibit B**.)

11. On or about December 21, 2016 Defendant ABM submitted a Proposal in response to the RFP. (“Contractor’s Proposal” or “ABM Proposal,” attached hereto as **Exhibit C.**)

12. Subsequently, ABM was awarded the contract and entered into an Agreement with SBOE dated March 2, 2017. (“Agreement,” attached hereto as **Exhibit F.**) The Agreement specifically incorporated: (a) the RFP, (b) Amendment 1, (c) the Contractor’s Proposal submitted by ABM, (d) the Contractor’s Revised Official Response Form submitted on February 7, 2017 (attached hereto as **Exhibit D**), and (e) Contractor’s Organization Chart. (“ABM Organization Chart,” attached hereto as **Exhibit E.**) The Agreement provided that ABM was to commence rendering services on April 1, 2017 and would terminate providing them on June 30, 2019, with an option on the SBOE’s part to extend the Agreement for an additional year.

13. The City was a third-party beneficiary of the Agreement because the parties intended to create a direct obligation from ABM to the City and provide the City with enforcement rights. The parties developed this intent because the City owned all the SPS facilities, except Holy Name Church, was funding the Agreement by appropriating the money to pay ABM, ABM was required to carry insurance covering the City, its agents and employees for any losses arising out of its performance, and because the custodial staff and trade workers ABM would supervise and for whom ABM would be responsible were direct employees of the City and/or SBOE.

14. On April 1, 2017, pursuant to the Agreement, Defendant ABM became responsible for the facilities management of all 21 SPS public schools and their attendant grounds, the SPS adult education program at Holy Name Church, and the Alternate Route to Success program at Lockwood Avenue.

15. In early August 2018, SPS custodial staff, under ABM's direction, supervision and control, were "opening" school facilities for the upcoming academic year when they discovered a large quantity of mold in the Westover Magnet Elementary School. In response, ABM attempted to remediate the condition simply by washing and painting the surfaces on which the mold was found. ABM made no significant effort to determine the source or the underlying cause of the mold infestation. For example, it did not investigate to determine whether mold was present below any of the surfaces it cleaned or whether there were any areas where water was infiltrating into the building.

16. Within days of learning that ABM was merely washing and painting mold-laden surfaces and was making no attempt to determine the source or underlying cause of the mold infestation, the City and SBOE formed a Mold Task Force ("MTF") which took over the mold remediation function at Westover and commissioned a study to determine the underlying cause of the infestation there.

17. The study revealed that while poor maintenance of the drainage on the property played a minor role, the mold infestation largely stemmed from a combination of a compromised roof and building envelope, failing mechanical systems, including HVAC blowers/fans and HVAC units, and the decision to shut down HVAC systems, to the extent they were working, over the summer months, as a result of which the building was left to suffer through the humid summer months without properly conditioned air.

18. As a result of the Westover study and its findings, the MTF commissioned studies of each of the other school facilities for which ABM was responsible to determine whether they too were mold infested. The studies revealed that, to one degree or another, all SPS facilities had at least some mold, and many were severely infested.

19. The MTF's studies further revealed that all the mold infestations were caused by a combination of compromised roofs and building envelopes, failing mechanical systems, including HVAC blowers/fans and HVAC units, and the decision to shut down HVAC systems, to the extent they were working, over the summer months.

20. The studies the MTF commissioned also revealed that basic maintenance functions, such as inspecting HVAC systems to ensure their continued operation and replacing HVAC components and filters as required, were not being performed in a timely fashion, if at all. In addition, the MTF discovered that to the extent ABM had become aware of water inundation at any particular property, its response was merely to apply a band-aid-type fix, e.g. to patch the wall or ceiling where the water had infiltrated, and do nothing to determine the underlying cause or even the entry-point of water into the building.

21. After discovering the district-wide mold infestation, the City and SBOE learned that Defendant ABM had never conducted the facilities needs study it promised to conduct once it took control of the SPS facilities. ABM's failure to perform this contractual duty (see *RFP §3.3B*) has prevented SBOE and the City from determining the "base-line" of the facilities at the time ABM took control of them.

22. On June 21, 2019, SBOE sent a letter to ABM terminating the Agreement for cause.

23. After SBOE terminated its Agreement with ABM, the MTF changed its name to the Stamford Asset Management Group ("SAMG") and assumed the facilities management functions for which ABM had been responsible. Continuing the investigation into ABM's performance, the SAMG discovered that nearly all the playgrounds that had been under ABM's

control were in a fair, poor or very poor condition, with many of those playgrounds containing Class A, B and C hazards, all of which posed risks to SPS children.

24. The SAMG along with SPS' Superintendent also discovered that ABM had managed the custodial staff in a way as to overrun the budget line in the 2018-2019 budget by over \$1 million.

25. The conditions described in the foregoing paragraphs were a direct and proximate result of ABM's breach of its contractual promises, including most significantly, the promise to "[a]ssure the safe, efficient mechanical and environmental operation of all buildings and the safe use and attractive appearance of all buildings and grounds," and the promise "to manage/supervise all custodial . . . building operations staff and trade workers . . . [and] manage all weekly payroll requirements". (*RFP §3.3.A.*) But for these ABM breaches, the Plaintiffs would not have experienced the extent of mold infestation they in fact experienced, nor would they have been required to take the drastic efforts described below to remediate mold infestation, which included closing one school and moving its entire student body, faculty and staff to temporary quarters. And they would not have been experienced a \$1 million budget overrun in the 2018-2019 fiscal year.

26. In particular, ABM, acting through one or more of its agents, servants, principals or employees, failed to fulfill its contractual promises to, without limitation:

- a. Visit, inspect and meet with the principal and head custodian at each facility twice a week and document the outcome of these activities;
- b. Develop on a quarterly basis a written facility management plan for each facility and present the plans to the SPS for its review and approval;
- c. Work to continually upgrade the district mechanical systems within existing budget constraints;

- d. Create, present, manage and balance an operating budget of approximately \$21 million per year as well as coordinate annual and long-term capital plans with the City's Engineering and Building Departments;
- e. Manage/Supervise all custodial (night, day shift, and part-time) building operations staff and all trade workers (7 days per week/24 hours per day/365 days per year) as well as manage all weekly payroll requirements;
- f. Solicit and supervise maintenance service contracts and establish schedules for service work, including work related to the HVAC systems;
- g. Maintain regulatory compliance for or with Indoor Air Quality ('IAQ'), Occupational Safety and Health Administration ('OSHA'), hazardous materials ('HAZMAT'), Municipal Separate Storm Sewer System ('MS4') storm water and Water Pollution Control Authority ('WPCA');
- h. Review, recommend, and implement improvements in maintenance schedules and trade worker schedules;
- i. Supervise the hiring, discipline and termination of custodial/trades personnel and OSS personnel;
- j. Supervise repairs to buildings, grounds, and equipment and recommend renovation and replacement of outdated equipment and material; maintain work order control system;
- k. Work with building principals and head custodians to prepare a capital needs priority list forecasted out for seven (7) years;
- l. Implement a budget controls/staffing assignments and overtime supervision; and
- m. Supervise SPS's IAQ [Indoor Air Quality] management program.

27. As a direct and proximate result of ABM's aforementioned breaches of contract, the City was forced to borrow significant sums of money by issuing bonds totaling approximately \$40 million to date to remedy the problem on an emergency expedited basis, all of which it will have to repay with interest. In addition to this capital spending, the City was forced to spend more than \$10 million in operating funds to address mold-related conditions, money

that was not previously budgeted. The emergency expedited remediation efforts have required the Plaintiffs to, without limitation:

- a. Relocate one school's entire student body, faculty and staff to a temporary facility the Plaintiffs leased for that purpose;
- b. Inspect and evaluate each of the SPS's facilities and their attendant grounds for water infiltration and mold infestation;
- c. Complete roofing work to repair multiple roof compromises and areas of water intrusion discovered at nearly all facilities;
- d. Repair compromised areas of the building envelopes of nearly all the SPS facilities.
- e. Repair failed and inoperable HVAC systems discovered at nearly all facilities;
- f. Conduct asbestos remediation as a necessary pre-requisite to various mold remediation activities;
- g. Perform mold remediation at all SPS facilities, including stripping walls, ceilings and other materials to their superstructure and replacing and painting the same;
- h. Re-test the facilities after work was completed to clear the same of asbestos particulates (as applicable) and mold spores; and/or
- i. Bring the playground facilities to an acceptable condition.

28. The district-wide mold infestations also caused widespread panic among parents, students, teachers and staff, which undermined the public's confidence in the district and impaired SBOE's mission of ensuring a safe and productive learning environment, all of which was a direct and proximate result of ABM's breaches of contract.

29. The Plaintiffs have further suffered damages associated with an unfair labor practice claim brought against them by the teacher's union, alleging unsafe working environments.

30. The Plaintiffs have also suffered damages resulting from the overrunning of the overtime budget line in the 2018-2019 budget by more than \$1 million.

31. The Plaintiffs claim expectancy damages and consequential damages, including interest they will have to pay on bonds issued to marshal funds to remedy the problem, all of which arose out of ABM's aforementioned breaches of contract.

**COUNT TWO: ON BEHALF THE STAMFORD BOARD OF EDUCATION AND
CITY OF STAMFORD AS TO ABM INDUSTRY GROUPS, LLC
FOR NEGLIGENCE**

1-4. Paragraphs 1 through 4 of Count One are incorporated herein by reference as if fully and completely realleged and are made paragraphs 1 through 4 of this Count Two.

5. On or about March 2, 2017, ABM and SBOE entered into an Agreement pursuant to which ABM became responsible for the entirety of the SPS's building operation, maintenance, and management functions, including direct responsibility for supervising SPS's existing custodial, trade and maintenance staff. ("Agreement," attached hereto as **Exhibit F**.) The Agreement specifically incorporated: (a) Request for Proposal 16-14 ("the RFP") which had been issued in 2016 by Stamford BOE (attached hereto as **Exhibit A**), (b) Amendment 1 to the RFP, consisting of responses to questions submitted by various bidders, including questions submitted by ABM (attached hereto as **Exhibit B**), (c) the Contractor's Proposal submitted by ABM (attached hereto as **Exhibit C**), (d) the Contractor's Revised Official Response Form submitted on February 7, 2017 (attached hereto as **Exhibit D**), and (e) Contractor's Organization Chart. ("ABM Organization Chart," attached hereto as **Exhibit E**.) The Agreement provided that ABM was to commence rendering services on April 1, 2017 and terminate its services on June 30, 2019, with an option on SBOE's part to extend the Agreement for an additional year.

6. The City was a third-party beneficiary of the Agreement because the parties intended to create a direct obligation from ABM to the City and provide the City with enforcement rights. The parties developed this intent because the City owned all SPS facilities, except Holy Name Church, was funding the Agreement by appropriating the money to pay ABM, ABM was required to carry insurance to cover the City and its agents and employees for any losses arising out of its performance, and because the custodial staff and trade workers ABM would supervise and for whom ABM would be responsible were direct employees of the City and/or SBOE.

7. The Agreement created numerous duties of care ABM would owe to SBOE and the City including, without limitation, the responsibility to:

- a. Visit, inspect and meet with the principal and head custodian at each facility twice a week and document the outcome of these facility visits;
- b. Develop on a quarterly basis a written facility management plan for each facility and present the plans to the SPS for its review and approval, incorporating the SPS' input and making modifications as required;
- c. Assure the safe, efficient mechanical and environmental operation of all buildings and the safe use and attractive appearance of all buildings and grounds, and work to continually upgrade district mechanical systems within existing budget constraints;
- d. Create, present, manage and balance an operating budget of approximately \$21 million per year as well as coordinate annual and long-term capital plans with the City Engineering and Building Departments;
- e. Solicit and supervise maintenance service contracts and establish schedules for service work. The subject contracts include but are not limited to those for emergency generators, fire alarms, security systems, elevators, control systems, heating, ventilating, and air conditioning ('HVAC') systems, Asbestos Hazard Emergency Response Act ('AHERA') plans, grease interceptors, pest management, and field maintenance;
- f. Maintain regulatory compliance for or with above and below ground bulk petroleum storage tanks, Indoor Air Quality ('IAQ'), air emissions,

Americans with Disabilities Act ('ADA'), Occupational Safety and Health Administration ('OSHA'), hazardous materials ('HAZMAT'), Municipal Separate Storm Sewer System ('MS4') storm water and Water Pollution Control Authority ('WPCA'), fat, oils and grease ('FOG') requirements;

- g. Review, recommend, and implement improvements in maintenance schedules and trade worker schedules. Coordinate and supervise summer building cleaning with the head custodians to maximize efficiency and minimize cost;
- h. Manage/Supervise all custodial (night, day shift, and part-time) building operations staff and all trades workers (7 days per week/24 hours per day/365 days per year) as well as manage all weekly payroll requirements;
- i. Supervise the hiring, discipline and termination of custodial/trades personnel and OSS personnel;
- j. Supervise repairs to buildings, grounds, and equipment and recommend renovation and replacement of outdated equipment and material; maintain an effective work order control system;
- k. Work with building principals and head custodians to prepare a capital needs priority list forecasted out for seven (7) years, and update the list before submitting capital requests to the BOE on or before October of each year;
- l. Implement budget controls/staffing assignments and overtime supervision; and,
- m. Supervise the SPS's IAQ [Indoor Air Quality] management program.

8. Further, §3.3.B of the RFP imposed additional duties of care on ABM in favor of SBOE and the City including, without limitation, the duty to conduct a "Facilities Needs Study."

9. On April 1, 2017, pursuant to the Agreement, Defendant ABM became responsible for the management of all 21 SPS public schools and their attendant grounds, the SPS adult education program at Holy Name Church and the Alternate Route to Success program at Lockwood Avenue. ABM's responsibility ended on June 21, 2019 when SBOE sent a letter to ABM terminating the Agreement for cause.

10. In early August 2018, SPS custodial staff, under ABM's direction, supervision and control, were in the process of "opening" school facilities for the upcoming academic year when they discovered a large quantity of mold in Westover Magnet Elementary School. In response, ABM attempted to remediate the condition simply by washing and painting the surfaces on which the mold was found. ABM made no significant effort to determine the source or the underlying cause of the mold infestation. For example, it failed to investigate to determine whether mold existed below any of the surfaces it cleaned or whether there were any areas where water was infiltrating into the building.

11. Within days of learning that ABM was simply washing and painting surfaces with mold and was making no attempt to determine the source or the underlying cause of the mold infestation, the City and SBOE formed a Mold Task Force ("MTF") which took over mold remediation functions at Westover and commissioned a study to determine the underlying cause of the mold infestation there.

12. The study revealed that while poor maintenance of the drainage on the property played a minor role, the mold infestation largely stemmed from a combination of a compromised roof and building envelope, failing mechanical systems, including HVAC blowers/fans and HVAC units, and the decision to shut down HVAC systems, to the extent they were working, over the summer months, as a result of which the building was left to suffer through the humid summer months without properly conditioned air.

13. As a result of the Westover study and its findings, the MTF commissioned studies of each of the other school facilities for which ABM was responsible to determine whether they too were infested with mold. The studies revealed that, to one degree or another, all SPS facilities had at least some mold, and many were severely infested.

14. The MTF's investigation further revealed that all the mold infestations were caused by a combination of compromised roofs and building envelopes, failing mechanical systems, including HVAC blowers/fans and HVAC units, and the decision to shut down HVAC systems, to the extent they were working, over the summer months.

15. The studies the MTF commissioned also revealed that basic maintenance functions, such as inspecting HVAC systems to ensure their continued operation, and replacing HVAC components and filters as required, were not being performed in a timely fashion, if at all. In addition, the MTF discovered that to the extent ABM had become aware of water inundation at any particular property, its response was merely to patch the wall or ceiling where the water had infiltrated, and not even attempt to determine the underlying cause or the entry-point of water into the building.

16. After the SBOE terminated its Agreement with ABM, the MTF changed its name to the Stamford Asset Management Group ("SAMG") and assumed the facilities management functions for which ABM had been responsible. Continuing the investigation into ABM's performance, the SAMG discovered that nearly all the playgrounds on SPS facilities were in a fair, poor, or very poor condition, with numerous playgrounds containing Class A, B, and C hazards, all of which posed risks to SPS children.

17. The mold infestations and dangerous and hazardous conditions at SPS playgrounds were a direct and proximate result of ABM's negligence and carelessness in that ABM, acting through one or more of its agents, servants, or employees, failed to properly, correctly, or sufficiently:

- a. Assure the safe, efficient mechanical and environmental operation of all buildings and the safe use and attractive appearance of all buildings and grounds;

- b. Visit, inspect and meet with the principal and head custodian at each facility twice a week and document the outcome of these activities;
- c. Develop on a quarterly basis a written facility management plan for each facility and present the plan to the SPS for its review and approval;
- d. Work to continually upgrade district mechanical systems within existing budget constraints;
- e. Create, present, manage and balance an operating budget of approximately \$21 million per year as well as coordinate annual and long-term capital plans with the City's Engineering and Building Departments;
- f. Solicit and supervise maintenance service contracts and establish schedules for service work, including work related to the HVAC system;
- g. Maintain regulatory compliance for or with Indoor Air Quality ('IAQ'), Occupational Safety and Health Administration ('OSHA'), hazardous materials ('HAZMAT'), Municipal Separate Storm Sewer System ('MS4') storm water and Water Pollution Control Authority ('WPCA');
- h. Review, recommend, and implement improvements in maintenance schedules and trades worker schedules;
- i. Supervise the hiring, discipline and termination of custodial/trades personnel and OSS personnel;
- j. Supervise repairs to buildings, grounds, and equipment and recommend renovation and replacement of outdated equipment and material; maintain an effective work order control system;
- k. Work with building principals and head custodians to prepare a capital needs priority list forecasted out for seven (7) years;
- l. Implement budget controls/staffing assignments and overtime supervision; and
- m. Supervise SPS's IAQ [Indoor Air Quality] management program.

18. As a direct and proximate result of ABM's negligence and carelessness, the City suffered extensive property damage requiring it to, without limitation:

- n. Inspect and evaluate each of the facilities and their attendant grounds for water inundation and mold infestation;

- o. Complete roofing work to repair multiple roof compromises and areas of water inundation discovered at nearly all facilities;
- p. Repair compromised areas on the building envelopes of nearly all facilities.
- q. Repair failed and inoperable HVAC systems discovered at nearly all facilities;
- r. Conduct asbestos remediation as a necessary pre-requisite to various mold remediation activities;
- s. Perform mold remediation at all SPS facilities, including stripping walls, ceilings and other materials to their superstructure and replacing and painting the same;
- t. Re-test the facilities after work had been completed to clear the same of asbestos particulates (as applicable) and mold spores; and/or
- u. Bring the playground facilities to an acceptable condition.

18. As a direct and proximate result of ABM's aforementioned negligence and carelessness, the City was forced to borrow significant sums of money by issuing bonds totaling approximately \$40 million to-date to pay for mold assessment, mold remediation, and related asbestos abatement, which it will have to repay with interest, and all of which has caused it and will continue in the future to cause it financial loss and damage. In addition, the City was forced to spend more than \$10 million in operating funds to address mold-related issues, money that was not previously budgeted.

19. As a direct and proximate result of ABM's aforementioned negligence and carelessness, SBOE was required to relocate one school's entire student body, faculty and staff to a temporary facility the City leased for that purpose, all of which has caused and will continue in the future to cause financial loss and damage.

20. As a direct and proximate result of the ABM's aforementioned negligence and carelessness, there was widespread panic among parents, students, teachers and staff, which

undermined the public's confidence in the district and impaired SBOE's mission of ensuring a safe and productive learning environment.

21. As a direct and proximate result of ABM's aforementioned negligence and carelessness, the Plaintiffs have suffered damages associated with an unfair labor practice claim brought against them by the teacher's union, alleging unsafe working environments.

22. As a direct and proximate result of ABM's aforementioned negligence and carelessness of ABM, SBOE and the City were prevented from determining the "base-line" of the 24 SPS facilities at the time ABM took control of them.

23. In addition, the SAMG along with SPS' Superintendent discovered that ABM had managed the custodial staff in a way as to overrun the budget line in the 2018-2019 budget by over \$1 million. This overrun and the need to deal with it were the direct and proximate result of ABM's negligence and carelessness in the performance of its obligation to manage/supervise the custodial staff and all weekly payroll requirements. The Plaintiffs have been further damaged by this aspect of ABM's negligence.

COUNT THREE: ON BEHALF OF CITY OF STAMFORD AND STAMFORD BOARD OF EDUCATION AS TO ABM INDUSTRY GROUPS, LLC FOR UNFAIR TRADE PRACTICES PURSUANT TO CONNECTICUT GENERAL STATUTES §42-110b (FRAUDULENT BILLING)

1. The Plaintiffs are the City of Stamford ("the City") and the Stamford Board of Education ("SBOE").

2. At all relevant times, Defendant ABM Industry Groups, LLC ("ABM"), was a foreign (Delaware) corporation registered and authorized to conduct business in Connecticut, and which had a place of business in Fairfield County, Connecticut. On information and belief,

ABM is a national facilities management firm with approximately 140,000 employees and \$6.4 billion in reported annual revenue in 2018.

3. The SBOE, also known as Stamford Public Schools (“SPS”), operates and maintains 21 public schools and their attendant grounds, as well as the SPS adult education program at Holy Name Church and the Alternate Route to Success program at Lockwood Avenue.

4. At all relevant times, the City owned the referenced facilities and their attendant grounds.

5. On or about March 2, 2017, ABM and SBOE entered into an Agreement pursuant to which ABM became responsible for all the SBOE’s building operation, maintenance, and management functions, including direct responsibility for supervising SPS’s existing custodial, trade and maintenance staff. (“Agreement,” attached hereto as **Exhibit F**.) The Agreement specifically incorporated: (a) Request for Proposal 16-14 (“the RFP”) which had been issued in 2016 by Stamford BOE (attached hereto as **Exhibit A**), (b) Amendment 1 to the RFP, consisting of responses to questions submitted by various bidders, including questions submitted by ABM (attached hereto as **Exhibit B**), (c) the Contractor’s Proposal submitted by ABM (attached hereto as **Exhibit C**), (d) the Contractor’s Revised Official Response Form submitted on February 7, 2017 (attached hereto as **Exhibit D**), and (e) Contractor’s Organization Chart. (“ABM Organization Chart,” attached hereto as **Exhibit E**.) The Agreement provided that ABM was to commence rendering services on April 1, 2017 and terminate its services on June 30, 2019, with an option for SBOE to extend the Agreement for an additional year.

6. The City was a third-party beneficiary of the Agreement because the parties intended to create a direct obligation from ABM to the City and provide the City with

enforcement rights. The parties developed this intent because the City owned all the SPS facilities, except Holy Name Church, was funding the Agreement by appropriating the money to pay ABM, ABM was required to carry insurance covering the City, its agents and employees for any losses arising out of its performance, and because the custodial staff and trade workers ABM would supervise and for whom ABM would be responsible were direct employees of the City and/or SBOE.

7. One of the promises ABM made in the Agreement was to provide SBOE each week with up to 56 part-time, non-employee custodians that it would obtain from an outside placement vendor. These individuals would supplement the more than 120 full-time, City and/or SBOE custodians working in the SPS's facilities and be supervised and directed by ABM, just as the fulltime employees were. The outside placement vendor would invoice ABM for the number of part-time custodians it placed with ABM, and ABM, in turn, was to invoice SBOE for the number of non-employee custodians the vendor placed with it.

8. Week in and week out, ABM invoiced SBOE for supplying 56 part-time, vendor-furnished custodians, representing to SBOE that it had in fact supplied SBOE in each of those weeks with these 56 individuals it purportedly obtained from the vendor.

9. After SBOE terminated ABM on June 21, 2019, the City and SBOE discovered that ABM had rarely furnished the 56 part time custodians for which it billed, that most of the time, the number of part-time custodians it obtained from the vendor and furnished to SBOE was substantially less, in many instances less than thirty part-time custodians. Thus, ABM, through its invoicing knowingly and deliberately made misrepresentations of material fact to SBOE in order to obtain public funds to which it knew it was not entitled. SBOE reasonably relied on ABM to present it with only proper, non-fraudulent invoices and not to seek public funds by

false pretenses. When ABM invoiced SBOE for providing 56 part-time custodians, SBOE accepted ABM's representation to that effect and paid the invoice as presented.

10. ABM's fraudulent conduct is altogether immoral, unethical, oppressive and unscrupulous.

11. ABM's fraudulent conduct also violates a variety of this state's public policies, not the least of which is that public funds are to be used only for the purpose for which they are appropriated.

12. By virtue of the conduct described above, the Plaintiffs have suffered an ascertainable loss of money and property.

13. The Plaintiffs claim actual damages directly and proximately caused by ABM's wrongful conduct, as well as punitive damages and attorney's fees to the full extent General Statutes §42-110g allows.

COUNT FOUR: ON BEHALF OF THE CITY OF STAMFORD AND THE STAMFORD BOARD OF EDUCATION AS TO ABM INDUSTRY GROUPS, LLC FOR FRAUDULENT BILLING

1-10. Paragraphs 1 through 10 of Count Three are incorporated herein by reference as if fully and completely realleged and are made paragraphs 1 through 10 of this Count

11. As a result of ABM's fraudulent conduct, the City has been damaged.

COUNT FIVE: ON BEHALF OF STAMFORD BOE AND CITY OF STAMFORD AS TO AFB CONSTRUCTION MANAGEMENT OF TRUMBULL, INC. FOR BREACH OF CONTRACT

1. The Plaintiffs are the Stamford Board of Education ("SBOE"), also known as Stamford Public Schools ("SPS"), and the City of Stamford ("the City").

2. The Defendant, AFB Construction Management of Trumbull, Inc. (“AFB”) is and at all relevant times was a domestic corporation registered and authorized to do business in Connecticut.

3. At all relevant times, SBOE operated and maintained 21 public schools and their attendant grounds, as well as the SPS adult education program at Holy Name Church and the Alternate Route to Success program at Lockwood Avenue.

4. At all relevant times, the aforementioned facilities and attendant grounds, with the exception of Holy Name Church, were and are owned by the City.

5. During the approximately 15 years before March 31, 2017, SBOE arranged with AFB to manage, maintain and operate all its facilities through a series of contracts (collectively, the “AFB Agreements”). The AFB Agreements also made AFB responsible for supervising and managing all the SPS custodians, trade and maintenance staff, even though these individuals were City and/or SBOE employees. Through the AFB Agreements, AFB promised to assure the safe, efficient mechanical and environmental operation of all the SPS facilities.

6. The last of the AFB Agreements was dated June 29, 2016. Although its term expired on October 31, 2016, the parties extended the Agreement to March 31, 2017 (the “2016 AFB Agreement,” attached hereto as **Exhibit G**). The 2016 AFB Agreement specifically referenced an earlier contract between the parties dated July 1, 2015 and, stating that it was the parties’ intent “to mutually terminate [that] contract and enter into a new agreement for similar services,” provided a Scope of Work to identify AFB’s obligations. The Scope of Work obligated AFB to, among other things and without limitation:

- a. Manage and supervise the SBOE custodians and trade employees;
- b. Maintain the SPS facilities and implement green cleaning;

- c. Implement and maintain a computerized preventative maintenance program, a work order system, an energy management program, an insect management plan and facilities for employee training and management;
- d. Supervise SBOE repair contracts;
- e. Manage and supervise SBOE part-time outsourced cleaning staff;
- f. Ensure OSHA compliance;
- g. Ensure EPA compliance;
- h. Coordinate and manage all SBOE non-capital projects;
- i. Manage the SBOE operations budget; and/or
- j. Manage SBOE facilities supplies and purchasing.

7. At all relevant times, the City was a third-party beneficiary of the AFB Agreements, including the 2016 AFB Agreement, because the parties intended to create a direct obligation from AFB to the City and provide the City with enforcement rights. The parties developed this intent because the City owned all the SPS facilities, except Holy Name Church, was funding the AFB Agreements by appropriating the money to pay AFB, AFB was required to carry insurance covering the City, its agents and employees, for any losses arising out of its performance, and the custodial staff and trade workers for whom AFB was responsible and had supervisory duties were direct employees of the City and/or the BOE.

8. Beginning in approximately 2001 and continuing up to and including March 31, 2017, Defendant AFB was responsible for the management of all 21 SPS public schools and their attendant grounds, the SPS adult education program at Holy Name Church and the Alternate Route to Success program at Lockwood Avenue.

9. In early August 2018, SPS custodial staff then under the direction, supervision and control of ABM Industry Groups, LLC, another outside facilities management firm, were

“opening” school facilities for the upcoming academic year when they discovered a large quantity of mold in Westover Magnet Elementary School located at 412 Stillwater Avenue, Stamford, CT.

10. Within days of learning of the problem, the City and SBOE formed a Mold Task Force (“MTF”) which took over the mold remediation functions at Westover and commissioned a study to determine the underlying cause of the mold infestation there.

11. The study revealed that while poor maintenance of the drainage on the property played a minor role, the mold infestation largely stemmed from a combination of a compromised roof and building envelope, failing mechanical systems, including HVAC blowers/fans and HVAC units, and the decision to shut down HVAC systems, to the extent they were working, over the summer months, as a result of which the building was left to pass the humid summer months without properly conditioned air.

12. As a result of the Westover study and its findings, the MTF commissioned studies of each of the other school facilities to determine whether they too were infested with mold. The studies revealed that, to one degree or another, all SPS facilities had at least some mold, and many were severely infested.

13. The MTF’s studies further revealed that all the mold infestations were caused by a combination of compromised roofs and building envelopes, failing mechanical systems, including HVAC blowers/fans and HVAC units, and the decision to shut down HVAC systems, to the extent they were working, over the summer months.

14. Further investigation by the MTF, then named the Stamford Asset Management Group (“SAMG”), also revealed that nearly all playgrounds on SPS facilities were in a fair, poor,

or very poor condition, with numerous playgrounds containing Class A, B, and C hazards, all of which posed immediate and severe risk of bodily injury to SPS children.

15. The district-wide mold infestations caused widespread panic among parents, students, teachers and staff, which undermined the public's confidence in the district and impaired SBOE's mission of ensuring a safe and productive learning environment.

16. AFB was a substantial factor in causing the conditions described above in that it failed to fulfill its contractual obligations to SBOE, including, without limitation, the obligation to:

- a. Assure the safe, efficient, mechanical and environmental operation of all buildings;
- b. Manage and supervise SBOE custodians and trade employees;
- c. Conduct maintenance and implement green cleaning;
- d. Implement and maintain a computerized preventative maintenance program, a work order system, an energy management program, an insect management plan and facilities for employee training and management;
- e. Supervise SBOE repair contracts;
- f. Manage and supervise SBOE part-time outsourced cleaning staff;
- g. Ensure OSHA compliance;
- h. Ensure EPA compliance;
- i. Coordinate and manage all SBOE non-capital projects;
- j. Manage the SBOE operations budget; and/or
- k. Manage SBOE facilities supplies and purchasing.

17. The condition of the building envelopes and roofs, in particular, have been the result of a failure effectively to follow and implement routine and preventative maintenance programs. HVAC systems, which are necessary to condition air and reduce the presence of

mold-producing moisture, were in particularly poor repair. Further, the MTF learned that AFB instituted a program of shutting down HVAC systems during the summer to save energy, which resulted in humid environments indoors for the summer months each year. In addition, multiple types of mold were discovered across the SPS facilities, several of the type that require years to develop to the extent they had when they were discovered.

18. But for AFB's aforementioned breaches of contract, the district-wide mold infestation described above would not have developed either at all or to the extent that it did.

19. As a direct and proximate result of AFB's aforementioned breaches of contract, the City was forced to borrow significant sums of money by issuing bonds totaling approximately \$40 million to date to remedy the problem on an emergency expedited basis, all of which it will have to repay with interest. In addition, the City was forced to spend more than \$10 million in operating funds to address mold-related issues, money that was not previously budgeted.

20. The emergency expedited remediation efforts have required the Plaintiffs to, without limitation:

- a. Relocate one school's entire student body, faculty and staff to a temporary quarter the Plaintiffs leased for that purpose;
- b. Inspect and evaluate of each of the facilities and their attendant grounds for water inundation and mold infestation;
- c. Repair multiple roof compromises and areas of water inundation discovered at nearly all facilities;
- d. Repair compromised areas on the building envelopes of nearly all facilities.
- e. Repair failed and inoperable HVAC systems discovered at nearly all facilities;

- f. Conduct asbestos remediation as a necessary pre-requisite to various mold remediation activities;
- g. Perform mold remediation at all facilities, including stripping walls, ceilings and other materials to their superstructure and replacing and painting the same;
- h. Re-test the facilities after work had been completed to clear them of asbestos particulates (as applicable) and mold spores; and/or
- i. Bring the playground facilities to an acceptable condition.

21. The Plaintiffs have further suffered damages associated with defending an unfair labor practice claim the teacher's union brought against them alleging unsafe working environments.

22. The Plaintiffs claim expectancy damages and consequential damages, including interest they will have to pay on bonds issued to generate funds to remedy the problem, all of which arose out of AFB's aforementioned breaches of contract.

WHEREFORE, the Plaintiffs claim:

1. Compensatory damages, including expectancy and incidental damages for breach of contract.
2. Compensatory damages for negligence;
3. Actual damages, punitive damages and attorney's fees for violations of the Connecticut Unfair Trade Practices Act, General Statutes §42-110b, *et seq.*;
4. Actual damages and punitive damages in the form of the cost of litigation for fraud;
5. Such other relief as the Court deems equitable and just.

THE PLAINTIFFS:
STAMFORD BOARD OF EDUCATION
and CITY OF STAMFORD


By 

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RETURN DATE: JANUARY 7, 2020 : SUPERIOR COURT
STAMFORD BOARD OF EDUCATION and : J.D. OF STAMFORD-NORWALK
CITY OF STAMFORD :
V. : AT STAMFORD
ABM INDUSTRY GROUPS, LLC, and :
A.F.B. CONSTRUCTION MANAGEMENT OF :
TRUMBULL, INC. : DECEMBER 2, 2019

STATEMENT OF AMOUNT IN DEMAND

The Plaintiffs claim damages in excess of the sum of fifteen thousand dollars
(\$15,000.00) exclusive of interest and costs.

By 
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